The only ground of appeal with regard to conviction is that the learned president erred in law by admitting carbon copies of the store requisition notes contrary to sections 65 and 66 of the Evidence Ordinance which greatly prejudiced the appellant's case. In other words counsel on behalf of the appellant argued that the original copy *i.e.*, the first copies of the requisition notes should have been produced in evidence.

The general rule in regard to the production of documents is stated in Chapter V of our Evidence Ordinance, in particular sections 65 and 66 pertaining to the present appeal.

Section 65(a)(i) states that secondary evidence of the contents of a document may be given when the original is shown or appears to be in the possession or power of the accused and when after due notice as mentioned in section 66 the accused does not produce it. *Roscoe's* Criminal Evidence, 15th edition, page 11 states:

"When a document is in the hands of the adverse party, a notice to produce it in court must be given to him, before secondary evidence of its contents can be received. Its object is not, as formerly thought, to give the holder an opportunity of providing the proper testimony to explain or confirm the document but it is merely to enable him to produce it if he likes at the trial, and thus to secure the best evidence of its contents."

But notice is not necessary when it appears or is proved that the accused has obtained possession of the original by fraud or force (proviso (c) to section 66).

The learned president was satisfied on the evidence that the appellant had fraudulently kept away the originals of the requisition notes. I agree with the court's finding. It would therefore seem to me that under the exception carbon copies of the requisition notes are admissible without notice to produce. If so, it was for the court below to draw such reasonable inferences therefrom as it thought fit. It must be accepted that the onus of proof throughout lies upon the prosecution but the evidence as it stands uncontradicted is such that it at least calls for an explanation. There is in my opinion overwhelming evidence as to the accuracy of the requisition notes. There is identification of the appellant as the person with whom those dealings took place, and the learned president was therefore, entitled to accept the accuracy of those documents. Again those documents were verified by the two bar captains who had knowledge of the identity of the appellant and a general knowledge of the dealings. The question to my mind turns on weight rather than on admissibility, and it is for the court below, after admission, to decide what valid inferences can be drawn from those documents. The inferences to be drawn may depend on the explanation or lack of explanation given by the appellant. Here there was lack of explanation.

The appeal against conviction is dismissed.

Sentence:

On behalf of the appellant it was said that the appellant's present employers are willing to retain him in his present employment in spite of the conviction recorded against him. It was also pointed out that in the circumstances of the case the sentence is excessive for a first offence. I have seriously considered all the surrounding circumstances. I think the sentence of 18 months imprisonment is far too excessive. I would set aside the sentence and substitute one day's imprisonment plus a fine of $2,000 in default six months' imprisonment and a compensation of $2,928.00 is to be paid into court for the Selangor Club.

Appeal dismissed; Sentence Varied.

Solicitors: *Lee Beng Cheang.*

HONG BEE REALTY LTD. v. COLLECTOR OF LAND REVENUE, KUALA LUMPUR

[O.C.J. (Abdul Hamid J.) December 29, 1971]

[Kuala Lumpur — Civil Application No. 9 of 1964]

Land Laws — Compulsory acquisition — Compensation — Objection against award — Criteria used to determine true market value of property — Land Acquisition Act, 1960, ss. 38, 40, 51(1)(b).

This was an objection against the award of the Collector of Land Revenue, referred to the court under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Government of the State of Selangor, of approximately 9.222 acres of land owned by the applicants.

The land acquired is situated outside the Kuala Lumpur Municipal boundary. A declaration in accordance with section 8 of the Act was published in the Government of Selangor *Gazette* No. 9, on January 3, 1963. The land was acquired on August 3, 1963.

On March 12, 1963, the collector held an inquiry and made an award of $3,000 per acre in respect of the land acquired. The applicants claimed a compensation of $185,226 based on $20,089 59 per acre, or 46 cents per square foot as at January 31, 1963. On September 23, 1963, a notice of award and offer of compensation was served on the applicants. On October 15, 1963, the offer of compensation was accepted under protest.

Held: (1) the date for determination of the "market price" was January 3, 1963 and not August 3, 1963, when the land was acquired;

(2) in this case, it was not practical to use the "development" method. The applicants/owners not only assumed the price that they could fetch for residential and commercial lots, but they also assumed that they would readily secure sale of completed lots. The assumption was also as regards the availability of water and electricity supply. Thus, the applicants could not seriously argue that there was an immediate development potentiality in 1963. The land is still undeveloped;

(3) therefore, in the circumstances of the present case, the "comparable" method was the fairest method of determining the market value. Thus, having regard to all the material evidence produced, $5,000 per acre was a fair market value in respect of the land acquired as at January 3, 1963;

(4) the amount the court awarded exceeded the sum awarded by the collector, but since the claim of the applicants/owners was so excessive, they were, by virtue of section 51(1)(b) of the Land Acquisition Act, to pay their own costs and half of the costs of the collector;

(5) interest on difference of sum awarded by the collector and the court was to be paid to the applicants with effect from the date of possession at the rate of 6 *per cent per annum.*

OBJECTION APPLICATION.

Chan Siew Yoon for the applicants.

Yusof bin Mohamed (Legal Adviser Selangor) for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is an objection against the award of the Collector of Land Revenue, Kuala Lumpur referred to this court under section 38 of the Land Acquisition Act, 1960 (hereinafter referred to as "the Act") in respect of the compulsory acquisition by the Government of the State of Selangor of approximately 9.222 acres of land owned by Hong Bee Realty Limited being land comprising part of Lot 3025, C.T. 10938 (6.720 acres out of the total area of 203.500 acres) and Lot 2770, C.T. 10938 (2.500 acres out of the total area of 5.356 acres) in the Mukim of Petaling, District of Kuala Lumpur, State of Selangor (hereinafter referred to as "the land acquired").

The land acquired is situated outside the Kuala Lumpur Municipal boundary at 6½ milestone Cheras Road *i.e.* along the Kuala Lumpur/Seremban trunk road near the Ulu Langat District boundary. A declaration in accordance with section 8 of the Act was published in the Government of Selangor *Gazette* No. 9 on 3rd January, 1963. The land acquired was for the purpose of road improvement to the southern approaches to Kuala Lumpur from 4th milestone to the 7th milestone Cheras Road. The date for determination of the "market price" is therefore 3rd January, 1963.

The Collector of Land Revenue, Kuala Lumpur held an inquiry on 12th March, 1963 and made an award of $3,000 per acre in respect of the two pieces of land acquired on 3rd August, 1963.

At the inquiry, Mr. Gan Whai Peng, the managing director of Hong Bee Realty Limited appeared for the owners. He claimed a compensation of $185,226 based on $20,089.59 per acre or 46 cents per square foot as at 31st January, 1963. Notice of award and offer of compensation in Form H dated 6th September, 1963 was served on the managing director of Hong Bee Realty Limited on 23rd September, 1963. On 15th October, 1963 the offer of compensation was accepted under protest.

In accordance with section 40 of the Act, the court appointed Enche Lee Yoke San and Enche Hisham Albakri as assessors. A copy of the provisions of the First Schedule of the Act was supplied to each of the assessors.

Mr. Chan Siew Yoon appeared for the applicants/owners and Enche Yusoff bin Mohamed, Legal Adviser Selangor appeared for the Collector of Land Revenue.

It is disclosed that lying about one mile to the north and north-east of Lots 2770 and 3025, at the 5½ milestone, are the Convent, the Chinese Temple and a drain workshed. At the 4½ milestone, there are the Lady Templer Hospital, Selangor Children's Home, Specialist Teachers' Training Institute and the Christian Cemetery. Further north within the Kuala Lumpur Municipal boundary, there are houses, shops and light industrial premises mainly of temporary construction. There were also large parcels of vacant land.

Immediately to the rear of the lots in question is Kampong Sungai Midah, a Government rural development scheme, a very small settlement consisting of temporary houses where only well water was provided. In the immediate vicinity of either side of the road is the Bukit Puteh Forest Reserve extension. There were some agricultural buildings and houses scattered here and there along this stretch of the road.

About 2½ miles to the south of the land acquired is the Batu Sembilan Village — a small village on the trunk road. The houses were mainly of temporary construction and there were some pre-war shops. The village was supplied with main water and electricity.

The portion of the land acquired from Lot 2770 is elevated ground and has a rear portion of about 300 feet from the road. The portion of the land acquired from Lot 3025 is elevated and flat and has a road frontage of approximately 540 feet and a frontage depth of 500 feet. Both pieces of land were vacant and covered with bushes.

There is no railway station in the immediate vicinity. The bus service from Kuala Lumpur town centre to Cheras terminates at the 4th milestone about 2½ miles from the land acquired. There is however a bus service operating from Kuala Lumpur to Seremban. Main water and electricity were not available.

Apart from some private and Government institutional premises and other buildings mentioned earlier, there is no indication of any permanent building development. The land acquired was under agricultural title. The owners applied for rescission of agricultural conditions of their lands in 1956. As they failed to pay additional premium imposed by the State Authority, the approval for rescission of agricultural conditions was withdrawn. No approval was formally granted though the State Town Planner prepared a lay-out plan of part of the land in 1957.

Subsequent to the date of acquisition several applications for rescission of agricultural conditions were made — Lots 4522 and 4523 on 13th March, 1964; Lots 2619, 2620 and 2621 on 1st August, 1964 in the Mukim of Kuala Lumpur; Lot 2069 in the Mukim of Cheras on 17th April, 1963; and Lots 596, 568 and 2087 in the Mukim of Cheras on 13th September, 1963 and 13th May, 1964.

The owners called one Gan Choong Choo their managing director to give evidence. He stated that the company purchased both lots in 1956 at $340 per acre. At that time the land was planted with some old rubber trees and partly vacant. The company's intention was to develop the land as a housing estate. It was however never developed as the company's application to pay the premium by instalments was refused.

They also called Mr. Chin Kok Keong, a licensed appraiser. He made a valuation for compensation purposes in March, 1963. A valuation report (P6) was produced. Attached thereto is a list of recorded transactions of agricultural lands in the neighbourhood. This list is intended to show the market value of other comparable agricultural lands situated in the locality of the land acquired.

Referring to the owners' draft lay-out plan, Mr. Chin stated that the plan was for commercial and residential development. In his view, it is proper to base the valuation on the development method. In that way an element of potential value will be included in the figure of valuation.

He described the formula by which he assessed the value using the development method. The price of land was first of all calculated at $1.75 per sq. ft. This was achieved by fixing $2.00 per sq. ft. on a commercial plot and $1.50 for house lot and then obtaining an average.

Under cross-examination Mr. Chin agreed that there was then no visible physical development. He also conceded that he had not included as costs the interest which the owners would have to bear for loans estimated to be around a quarter of a million dollars required to pay the additional premium for conversion and to initially finance the development. In view of this, I do not feel that it is practical to use, at least in so far as this case is concerned, the development method. In the first place the owners not only assumed the price that they could fetch for residential and commercial lots but they also assumed that they would readily secure sale of completed lots. As Mr. Lee Yoke San said, they omitted the provision of deferrment due to the time lag and the appropriate rate of interest applicable and the degree of risk which would affect a normal rate of interest. Secondly, the owners also assumed the availability of water and electricity supply.

Referring to Lots 568 and 569 situated at approximately 5¼ milestone, Mr. Chin agreed that development started on these lots after 1963 and they could not sell the land. In 1965 and 1967, Yulek Gardens took over. There was also another housing development. Both these housing developments were nearer to the municipal boundary.

Two witnesses were called by the Collector of Land Revenue. Raja Mohamed Ali (DW1), the State Town Planner Selangor testified that at the request of the Land Office, a lay-out plan of part of the land owned by the applicants was drawn up in June, 1967. This was for purposes of the application for conversion. A certain portion of land covered by this plan was acquired. DW1 was unable to say what the demand for developed land was in 1963 but he felt that the potentiality of any land would depend on the availability of public services including water supply and electricity. According to him, the land is still undeveloped. In his opinion, it might be due to the absence of demand and water supply.

The main witness for the collector was Mr. Lim Mau Chin, Acting Regional Director of Valuation, Treasury Division, an expert government valuer who has been in the department since 1958. He inspected the land acquired in 1963, October 1964 and June 1971 and prepared a report (P7).

Mr. Lim referred to Suntex Gardens, a housing estate south of the land acquired and explained that this land was located close to Batu Sembilan New Village and a portion of it is within the village area where water and electricity were available.

He then stated that he visited the land owned by the applicants in 1971 and still saw no sign of development. This land is far from the gazetted water supply area. There is electricity now but he was unable to say whether it was adequate to supply the area.

Referring to Bolton and Yulek Gardens at 4½ to 5th milestones, Mr. Lim said that Bolton Gardens commenced development in 1969 although the rescission of agricultural conditions was applied for in 1964. Yulek Gardens — formerly known as Cheras Gardens — started cutting down trees in 1965 and some months later, the housing scheme was abandoned. Yulek Gardens took over in 1967 and development commenced in 1968.

In his opinion the demand for houses in the area between 4½ to 7th milestones is not good and there are still houses available in Bolton Gardens even though it was only developed to the extent of about 20%. There is still 80% of land for houses in Bolton Gardens. Yulek Gardens has so far been developed to the extent of approximately 80%.

As for the land acquired, Mr. Lim felt that its potentiality was not immediate. In his view, the fairest way to determine the market value is to assess the land by way of comparable method and not by way of development method.

I am inclined to agree with the view expressed by Mr. Lim. In my opinion the applicants could not seriously argue that there was, in respect of the land owned by them, an immediate development potentiality in 1963. The land is still undeveloped. One of the main reasons for this is the absence of water supply. Besides the land is situated at least a mile away from Bolton Gardens where there is still plenty of land for housing available. Furthermore Bolton Garden is much nearer to the municipal boundary than the land acquired.

For these reasons, I feel that the value of the land acquired could not be properly based on development method. In fact there is no basis upon which the owners could argue that the development method is the only fair method to determine the market value. The owners do not however completely reject the comparable method. They contend that the fair value of the land in the neighbourhood of the land acquired as evidenced by the sale transactions of such lands should be around $7,500 per acre. Mr. Lim disagreed. In his opinion the fair and reasonable market value is $3,000 per acre. He took into account the nature and situation of the land acquired and compared it with the nature and situation of the land sold.

Appendix II of his report shows a list of recent sales of land. Of these transactions, he stated that Lots 1432, 1549, 2068; 1/6th share of Lots 1604, 1605, 1606, 2086, 2087, 2089 and 2308; 1/6th share of Lots 596 and 598; 1/8th share of Lots 596 and 1/8th share of Lots 2087 and 2088 were not market sales. His reasons for saying this are set out in the remark column against each of these items.

Closest to the land acquired but nearer to the municipal boundary is Lot 1580. This lot was sold approximately 4 months prior to 3rd January, 1963 at $5,581 per acre. It is situated at 5¾ milestone and has about 100 feet frontage to Cheras Road. The land is flat and low-lying and covered with bushes and lalang. Although it is described that the land was covered with fruit trees, Mr. Lim was unable to say what these fruit trees were. He did however describe the land as being covered with bushes and lalang. In view of this, I am forced to the conclusion that in all probability, the purchaser of this lot had taken into account the vacant value of the land and its suitability for development, in which case such value should reflect the price which a purchaser had willingly paid for land with some development potential. This, I think, is evident by the fact that on 10th May, 1963, the same lot was sold at $10,000 per acre. However, it must be remembered that this was a small piece of land (2.15 acres) and as such, it was easily saleable.

For comparable purposes, Lot 2430 should also be considered. This lot which is situated at about the 6¼ milestone a quarter of a mile away to the north of the land acquired, was sold on 17th February, 1961 for $5,500 per acre. It was covered with budgrafted rubber 5 years old at the date of sale. It seems that this lot was sold as rubber land. Subsequently a portion of this land (2.12 acres) was acquired in connection with the road improvement scheme and it was paid $5,500 per acre.

Mr. Lim has also attached to his report (Appendix III) a list of the lands acquired for the road improvement scheme between 4th to the 7th milestones. The majority of the awards was $7,500 per acre. These lands were however to the north of the land acquired. I do not therefore think that the sums awarded could properly be taken as the basis for the determination of the market value of the land acquired, and indeed they did not reflect the price which a willing vendor might reasonably expect to obtain from a willing purchaser.

In the circumstances of the present case, I hold the view that the comparable method is the fairest method of determining the market value. As a basis for comparison, I would consider the price paid for Lot 1580. I should however like to emphasize that this land was only a small lot and was therefore easily saleable. The land acquired was a portion of a big lot and as such, it seems unlikely that the owners would willingly sell only that portion of Lot 3025 fronting the main trunk road. If they are to dispose of the whole of Lot 3025, they would probably find it difficult to secure a purchaser who would be willing to pay a price higher than $5,500 per acre. Factors such as the absence of water supply and electricity will undoubtedly be considered by an intending purchaser. The other factor which must not be ignored is that this lot is farther to the south of Lot 1580. For these reasons, I am of the opinion that the fairest value should not exceed $5,000 per acre even as at 3rd January, 1963, that is, 4 months after the sale of Lot 1580. In determining the value, I have also taken into consideration that by this acquisition, the owners have not really been deprived of road frontage to Lot 3025. They have in effect acquired a frontage of a wider main trunk road.

That brings me to the respondent's contention that a deduction should be made from compensation payable on account of the increases in the land due to the government road scheme. Mr. Lim estimated that the deduction should be around $100 per acre — a total of $19,964 for the remaining area of 199.639 acres. The respondent is relying on paragraph 2 (b) of the First Schedule of the Act which provides that —

> "2. In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration....
>
> (b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;"

Before considering the likelihood of any increase in the value of other land, the nature of the use to which the land acquired will be put should, I think, be considered. This land was acquired in connection with the government road scheme. Primarily it was for purposes of widening the existing road. At the time of acquisition, there was already an existing main trunk road. This was not a case of a conversion of a secondary road into a main trunk road. In my view, the respondent has not sufficiently established to my satisfaction that an increase in the value of other land is likely to accrue from the use to which the land acquired will be put. Mr. Lim himself admitted that the government's road scheme does not entirely attribute to the increase. He agreed that it is difficult to say to what extent it attributed to the increase. I am therefore of the opinion that in determining the compensation payable, I should not assess any deduction for the betterment.

There is one other point which I should like to deal with. Mr. Lim compiled a list of sales of agricultural land in the Serdang area. He analysed the value of fruit and rubber trees with a view to assessing the value of land deducting the value of rubber and fruit trees. To my mind, this method of valuation could not properly be applied to the present case. Although the lot in question was on 3rd January, 1963 under agricultural title, it could hardly be denied that there was in fact some foreseeable, though not immediate, development potentiality. The intending purchaser of Lot 3025 would certainly take this into account. I concur with the views expressed by Mr. Lee Yoke San that Mr. Lim's deduction seems faulty in that agricultural considerations cannot in all cases be assumed to override the basic land value. The land itself may be valuable by reason of some develop-

ment potentiality or of the use to which the intending purchaser would put to such land. Mr. Chan Siew Yoon drew my attention to a passage at page 916 of *Cripps'* Compulsory Acquisition of Land, 11th edition where it is stated that —

"Where, however, the land has potentialities beyond its present use which can only be realised by his giving up possession for exploitation by the purchaser, and the owner is entitled to the value of these potentialities, the land has two values to him, (i) the existing use value and a right to compensation for disturbance, and (ii) the potential value; and he is entitled to whichever is the higher."

He submitted that in the present case, the land has agricultural value and development potential and the potential value should supersede the agricultural value. There is some validity in the argument although this may not be true in every case. It depends largely on the degree of the development potentiality and the extent to which it exceeds the existing use value.

Having regard to all the material evidence produced before this court, I am firmly of the opinion that $5,000 per acre would be a fair market value in respect of the land acquired as at 3rd January, 1963. With respect I disagree that $7,500 per acre should be awarded.

The amount the court awards exceeds the sum awarded by the Collector of Land Revenue but the claim of the owners was so excessive that I consider it fit that the owners should pay their own costs and half the costs of the collector (section 51(1)(b). Land Acquisition Act). I also order that each assessor shall receive a fee of $100 for each day's hearing that is, the 20th, 21st and 22nd of October, 1971 and a sum of $50 for this day the 29th day of December, 1971 and the fee paid to the assessors shall constitute costs in the proceedings.

Interest on difference of sum awarded by the Collector of Land Revenue and the court at 6% shall be paid to the applicants with effect from date of possession.

Order accordingly.

Solicitor: *Shook Lin & Bok.*

LIEW KUM KIEW v. COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[O.C.J. (Abdul Hamid J.) January 7, 1972]

[Kuala Lumpur — Originating Motion No. 2 of 1969]

Local Government — Planning permission — Refusal by commissioner — Exercise of powers — Town Boards Enactment (F.M.S. Cap. 137), s. 145(ii).

Specific Relief — Enforcement of public duties — Exercise of power by local authority — Whether ultra vires — Specific Relief (Malay States) Ordinance, 1950, s. 44.

This was an application by a registered proprietress of land for an order that the respondent be directed to give planning permission. The said land is within the municipal boundary but not covered by the approved town plan.

It was averred that in 1964, the applicant asked for planning permission to erect an additional two-storey shophouse on the said land. This site plan was disapproved. The applicant's appeal was dismissed. The ground for refusal was that the new road improvement line would affect the portion under appeal.

The applicant contended that the ground for refusal was *ultra vires* as the new road improvement line had not been gazetted. A further contention was that as the area had not been included as part of the approved town plan, the proposal for the new road improvement line could not have any effect.

The respondent contended that the new road improvement line need not be gazetted, and although the said land was not included as part of the approved town plan, the respondent had power to prescribe a regular line of street.

Held: the commissioner is empowered to refuse approval of a plan for any new building to be erected upon any land in respect of which the preparation of a lay-out plan has been made. The commissioner had rightly exercised the powers given under section 145(ii) of the Town Boards Enactment and therefore had not in any way acted *ultra vires* his powers.

MOTION.

N. A. Marjoribanks for the applicant.

Abdul Hamid Azmi and *R. Padmanabhan* for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is an application by Liew Kum Kiew of 201, Klang Road, Kuala Lumpur (hereinafter referred to as "the applicant") the registered proprietress of land contained in Lot 1251 situated at 4th Mile, Klang Road, Kuala Lumpur (hereinafter referred to as "the said land"). The said land is within the municipal boundary but not covered by the approved town plan.

The applicant prays for an order that the respondent, that is, the Commissioner of the Federal Capital be directed to give planning permission in regard to site plan No. 6299.

It is averred that in 1964, the applicant asked for planning permission to erect an additional two-storey shophouse on the said land as shown in plan No. 6299. This site plan was disapproved. The applicant's appeal was dismissed. The ground for the refusal is that the new road improvement line will affect the portion under appeal. The applicant refers to two letters from the respondent, LKK1 dated 29th April, 1966 and LKK2 dated 10th November, 1967 as follows —

LKK1: "Application for development of one 2-storey shophouse on Lot No. 1251 4th Mile, Jalan Klang, Kuala Lumpur

With reference to your letter No. T/1917/65 dated 19th July, 1965 regarding the above subject, I am directed to inform you that your appeal for reconsideration has been refused by the Pesurohjaya on the grounds that the provisions of section 115A of the Town Boards Enactment are being enforced and that the lot was surveyed for one shophouse with a 20 feet building line."

LKK2: "Permintaan memajukan tanah untok proposed additional two-storey shophouse on Lot 1251 4th Mile, Jalan Klang, Kuala Lumpur

Berhubong dengan permintaan tuan bagi memajukan lot tuan yang tersebut bertarikh 20.7.67, saya di-arahkan untok memberitahu ia-itu permintaan tuan tidak di-luluskan oleh Pesuroh Jaya Ibu Kota Kuala Lumpur.

2. Permintaan ini ada-lah di-tolak dengan alasan yang berikut:- on grounds that (i) The new road improvement line will affect the portion under appeal, and (ii) Appellant was aware of layout No. L.722."